

**THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.20680 of 2018**

Arjun Kumar Son of Late Lakshman Mandal, Resident of Village Khairpur,  
Post Akidattpur, P.S. Kharik, Dist. Bhagalpur, Presently residing at C/o Y.K.  
Singh, Main Road, Mahendru, P.S. Sultanganj, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna
2. The Chief Secretary, Government of Bihar, Main Secretariat, Patna
3. The Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
4. The Divisional Commissioner, Patna Division, Patna.
5. The District Magistrate, Patna.
6. The Municipal Commissioner, Patna Municipal Corporation, Mauryalok, Complex Patna.
7. The Union of India through the Ministry of Housing and Urban Affairs, Central Secretariat, Maulana Azad Road, New Delhi through its Secretary
8. The Smart City Mission, Under Ministry of Urban Affairs, Government of India through its Chief Executive Officer, New Delhi

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                                             |
|----------------------|---|-------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Subodh Kumar Jha, Advocate<br>Mr. Mohit Agrawal, Advocate<br>Mr. Dr. Ratan Kumar, <i>Amicus Curiae</i>  |
| For P.M.C.           |   | Mr. Bindhyachal Singh, Advocate                                                                             |
| For the Respondent/s | : | Mr. Yogendra Prasad Sinha, AAG-7<br>Mr. Rakesh Ambastha, AC to AAG 7<br>Mr. Anshay Bahadur Mathur, Advocate |

**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 19-02-2021**

Petitioner has prayed for the following relief(s):

- “i) For a direction to the Respondent State not  
to make the Bihar Apartment Ownership



Act an illusory law but to make it an effective tool/instrument for the Apartment Owners for redressal of their grievances against the Promoter and against the erring Apartment Owners;

- ii) For a direction to the Respondents as to why they have failed to frame rules for effectively carrying out the object of Bihar Apartment Ownership Act, 2006 (the 'Act, 2006' for short) as the Respondent State has yet not framed the rule in terms of Section 31 of the said Act;
- iii) For a direction to notify the competent Authority to some judicial officer as the Municipal Commissioner is having multiple responsibility and is unable to discharge any function as competent authority under the said Act;
- iv) For a direction to the Respondents to issue necessary instructions and direction for formation and registration of Co-operative Society for the purpose of the provisions contained in Section 16 of the said act because at present no registration of Co-operative Society is being done for the purpose of the said Act;
- v) For a direction to the Respondents to do all the needful for making this act effective tool for redressal of grievances of the Apartment Owners against its Promoters and for the Association against the defaulting Apartment Owners;



- vi) For a direction to the Respondents to make some mechanism for effective implementation of the direction by the competent Authority so that the provision of the Act may not become illusory and eye wash, and/or pass such other order or orders, direction or directions as Your Lordships may deem fit and proper in the facts and circumstances of the present case.”

After the matter was heard for some time, learned counsel for the petitioner restricted the averments pleaded in para 44 whereby it stands highlighted that despite the enactment of the Real Estate (Regulation & Development) Act, 2016 (referred to as the RERA Act), no Rules, as are mandatorily required in terms of Section 31 of the Bihar Apartment Ownership Act, 2006 (referred to as the Ownership Act) stands framed.

On behalf of the State, it is argued that, perhaps, with the subsequent enactment i.e. the Real Estate (Regulation & Development) Act, 2016, there is no requirement to do so.

We are informed that till date the Ownership Act has not been repealed and is in vogue. In fact, we notice that the provisions of RERA Act are in addition to any other law in force.

If that be so, we see no reason as to why the Rules



for carrying out the provision of the Ownership Act be not framed.

As such, we dispose of the present petition with the direction to the Respondent No. 3 namely the Patna Municipal Corporation through the Municipal Commissioner, to positively take an appropriate action in terms of and under the said Act at the earliest and not later than six months from today.

Liberty reserved to the petitioner to take appropriate action, if so required and desired.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

K.C.Jha/-

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